

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ETHAN L. OWEN and KARI L.  
OWEN,

Plaintiffs,

v.

RYEN L. GODWIN, et al

Defendants.

NO: CV-12-3037-RMP

ORDER DENYING ACEBEDO  
DEFENDANTS' MOTION TO  
CHANGE VENUE

Before the Court is Defendants Pierre E. Acebedo's and Acebedo & Johnson, L.L.C.'s (collectively "Acebedo Defendants") motion to change venue. The Court has reviewed the motion, the memoranda for and against, the declarations for and against, all other relevant filings, and is fully informed.

The Plaintiffs, Ethan and Kari Owen, filed the above-captioned action on March 23, 2012, alleging legal malpractice and breach of fiduciary duty based on the actions of Defendant Ryen Godwin. According to the complaint, ECF No. 1, Mr. Godwin had represented the Plaintiffs in a civil matter. At the time that

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1 representation began, Mr. Godwin was employed by Defendant Acebedo &  
2 Johnson, L.L.C. During the course of that litigation, Mr. Godwin left Acebedo &  
3 Johnson, L.L.C. and entered employment with Defendant McGavick Graves, P.S.  
4 Mr. Godwin remained counsel for the Plaintiffs throughout his change of  
5 employment.

6 The Plaintiffs allege that Mr. Godwin committed malpractice with respect to  
7 his representation of them in the underlying civil matter and a related probate  
8 action. They further allege that as a result of Mr. Godwin's malpractice, judgment  
9 was entered against the Plaintiffs in the amount of \$132,354.25. As a result of the  
10 judgment, the Plaintiffs sought Chapter 13 bankruptcy protection. The Plaintiffs  
11 filed their bankruptcy petition on November 10, 2011, and the case is pending in  
12 front of Bankruptcy Judge Frank L. Kurtz in the Eastern District of Washington,  
13 11-05484-FLK13.

14 The Acebedo Defendants have moved the Court to transfer this case to the  
15 Western District of Washington under 28 U.S.C. § 1404. The Plaintiffs oppose  
16 transfer and argue that the applicable statute under which to review the merits of  
17 the transfer request is 28 U.S.C. § 1412. There is apparently a split of authority as  
18 to whether § 1404 or § 1412 controls the transfer of an action "related to" but not  
19 "arising under" Title 11. *City of Liberal, Kansas v. Trailmobile Corp.*, 316 B.R.  
20 358, 361-62 (D. Kansas 2004) (citing numerous bankruptcy and district court cases

1 splitting on this issue). It should be noted that neither party disputes that venue is  
2 appropriate in this Court under 28 U.S.C. § 1409.

3 After the motion to transfer was filed, the Honorable Lonny R. Suko granted  
4 a motion in another action withdrawing reference to a portion of the Plaintiffs'  
5 bankruptcy case and consolidating that case with the present action. This Court  
6 granted a similar motion to consolidate. ECF No. 43. As a result, some of the  
7 present action "arises under" Title 11. Accordingly, the dispute over the  
8 applicability of § 1404 is mooted and the appropriate section under which to  
9 proceed is § 1412. *See* § 1412.

10 Section 1412 reads: "A district court may transfer a case or proceeding  
11 under title 11 to a district court for another district, in the interest of justice or for  
12 the convenience of the parties." Under a plain reading of 1412, a Court's transfer  
13 of venue must be based on either the "interest of justice" or "the convenience of  
14 the parties." § 1412; *accord In re Donald*, 328 B.R. 192, 204 (B.A.P. 9th Cir.  
15 2005). This inquiry is made on a case by case basis. *TIG Ins. Co. v. Smolker*, 264  
16 B.R. 661, 668 (Bankr. C.D. Cal. 2001). There is a presumption that an action  
17 should remain in the same district as where the bankruptcy is pending and the  
18 burden is on the party seeking transfer to prove by preponderance of the evidence  
19 that transfer is warranted. *Id.* In considering the appropriateness of transfer, "a  
20 typical laundry list of non-exclusive factors" consists of:

1 (1) proximity of creditors to Court; (2) proximity of debtor to Court;  
2 (3) proximity of witnesses necessary to administration of estate; (4)  
3 location of assets; (5) economic and efficient administration of case;  
4 (6) need for further administration if liquidation ensues.

5 *Donald*, 328 B.R. at 204.

6 The Court concludes that the Acebedo Defendants have failed to overcome  
7 the “home court presumption” that related actions should be heard in the same  
8 venue as the bankruptcy. *TIG Ins. Co.*, 264 B.R. at 668. The substance of the  
9 Acebedo Defendants’ argument is that proceeding in the Tacoma Division of the  
10 Western District will be more convenient for the majority of witnesses because  
11 those witnesses reside—and the alleged activities forming the basis for the  
12 malpractice lawsuit occurred—in the Western District. The Acebedo Defendants  
13 assert that Plaintiffs will suffer little prejudice from a transfer because Plaintiffs  
14 chose to litigate their earlier action in the Western District.

15 The Plaintiffs do not contest that the majority of witnesses reside in the  
16 Western District but contest the characterization of their case and the need for  
17 testimony by many of the witnesses identified by the Acebedo Defendants. The  
18 Defendants also identify that some witnesses reside in the Eastern District. The  
19 Court notes that this case is a far cry from those cases where the competing forums  
20 are located hundreds of miles apart. The courthouse in Yakima, Washington, is the  
westernmost courthouse in the Eastern District. Although a mountain range

1 separates Yakima from Tacoma, the distance may be traversed with only a few  
2 hours' drive.

3 In light of the fact that there are questions as to the need for the testimony of  
4 all of the witnesses identified by the Acabedo Defendants, that there are witnesses  
5 for whom the Eastern District is more convenient, that there is a lack of support for  
6 the motion by co-defendants McGavick Graves, P.S. and Ryen Godwin, and that  
7 Yakima, Washington, is relatively close to Tacoma, Washington, the Court  
8 concludes that the convenience afforded to witnesses residing in the Western  
9 District is insufficient to overcome the "home court presumption" that cases related  
10 to bankruptcy actions should remain in the same venue as the bankruptcy.

11 Additionally, the interest in the economic and efficient administration of the  
12 case support keeping the action in Yakima in light of the fact that a portion of the  
13 bankruptcy action is now a part of this case. It makes little sense to split the  
14 bankruptcy over two districts. Accordingly, **IT IS HEREBY ORDERED** that  
15 Acebedo Defendants' motion to Change Venue, **ECF No. 22**, is **DENIED**.

16 The District Court Clerk is directed to enter this Order and provide copies to  
17 counsel.

18 **DATED** this 10th day of September 2012.

19  
20 s/ Rosanna Malouf Peterson  
ROSANNA MALOUF PETERSON  
Chief United States District Court Judge